

LFC Requester:**Connor Jorgensen****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*Original ☒ Amendment ☐
Correction ☐ Substitute ☐**Date** 01/20/2016**Bill No:** SB12**Sponsor:** Sen. Peter Wirth**Agency Code:** 305**Short Title:** CHANGES TO PUBLIC
FINANCING OF
CAMPAIGNS**Person Writing** AAG James J. Torres**Phone:** 827-6047 **Email** jtorres@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Relates to:

SB 11

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

Senate Bill 289 amends the Voter Action Act, Sections 1-19A-1, 2, 3, 6, 7, 9, 10, 13, and 17 NMSA 1978 in several ways relating to eligibility and use of campaign financing. The following is a synopsis of relevant amended sections:

1-19A-2: SB 289 adds definitions of "contributions" and "coordinated expenditure" and removes the definitions of "seed money" and "noncertified candidate."

1-19A-3: A declaration of intent must be filed with the Secretary of State prior to collecting any contributions, as opposed to just qualifying contributions. The amount of contributions a person may collect while remaining an eligible applicant candidate is reduced from \$500 to \$100 from any one contributor, excluding qualifying contributions.

1-19A-7: Language is added proscribing certain uses of funds distributed to a certified candidate, including prohibiting use for personal living expenses and contributions to another campaign. Further, all funds not used during a campaign, including the amount received from a political party or private party, must be transferred to the Secretary of State for deposit in the fund. Importantly, a certified candidate's total campaign expenditures includes not only money received from the public election fund, but also money received from a political party, a private party, and other contributions collected pursuant to the Voter Action Act.

1-19A-9: Language is removed requiring noncertified candidates who have as an opponent a certified candidate to report their campaign expenditures to the Secretary of State ten days before the election. Language requiring similar reporting by people and political committees is also removed. Further, the definition of "qualifying period" for independent and minority party candidates is changed from February 1st to January 1st, creating a one month extension.

1-19A-10: "Seed money" is removed from the list of money required to be deposited into the fund. Instead, unspent "contributions to a candidate" shall be deposited into the fund.

Section 8: A new section to the Voter Action Act provides that an applicant candidate may collect contributions during the 60 days immediately preceding the qualifying period and throughout the qualifying period. The applicant may also collect private contributions not exceeding \$100 per contributor during the election cycle. Importantly, only qualified electors

registered in a candidate's district may contribute and such contributions are limited to \$100 per election cycle, excluding contributions made during the qualifying period.

1-19A-13: The amount to be distributed to candidates during uncontested elections is lowered from 50% to 10% of the amount available during contested elections. Language is removed requiring the secretary of state to increase the total amount to be distributed by 20% for matching purposes.

1-19A-17: Language is added requiring the Secretary of State to impose both a fine and transmit the finding to the Attorney General, instead of one or the other.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

1. Whether to remove the provisions in New Mexico's Public Financing law, the Voter Action Act, that have been ruled unconstitutional by the U. S. Supreme Court since they increase the amount of public funds made available to a publicly financed candidate if an opponent of that candidate receives or expends a greater amount than the amount of public funds originally provided to the publicly financed candidate. See *Arizona Free Enter. Club's Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011).
2. While SB 12 does remove all references to "matching" the funds of an opposition candidate, this bill does not strike Section 1-19A-14, which is the primary section that requires the Secretary of State to distribute additional funds to a certified candidate to match the funds raised by an opposing candidate. The United States Supreme Court in *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011) held a similar statute in Arizona unconstitutional. Query: to be consistent, should SB 12 be amended to expressly repeal Section 1-19A-14?
3. To the extent candidates are elected to vote on issues affecting the entire State, it may be unconstitutional to deny voters from outside a candidate's district the right to contribute up to \$100 to a publicly financed candidate. This denial might be viewed as an abridgement of the freedom of political expression and political association of the voters from outside the candidate's district who will nevertheless be affected by the candidate's votes once elected to office. The United States Supreme Court has held that the government may not restrict the number causes or candidates a donor may support. See *McCutcheon v. Fed. Election Comm'n*, 134 S. Ct. 1434, 1438 (2014). SB 12 may be interpreted as an even greater restriction by preventing certain voters from contributing any amount to a particular candidate. Denying the rights of citizens to contribute to candidates elected to represent the state is likely not narrowly tailored to serve a compelling state interest in preventing corruption or the appearance of corruption in elections. See *Id.*
4. A key purpose of the bill seems to be to allow publicly financed candidates to receive not only the amount of public funds specified on a per registered voter basis for each eligible office but also to use all the \$100 or less contributions that the publicly financed candidate can collect. If that is accurate, it would seem helpful to clarify expressly in the bill that those \$100 or less contributions may be added to the funds made available to the publicly financed candidate and are irrespective of any other limits that may be imposed on the amount of public funds a candidate may receive.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 11

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo. That will mean that New Mexico's public financing law, the Voter Action Act, will have statutory provisions on matching fund amounts that have been declared unconstitutional by the U. S. Supreme Court.

AMENDMENTS

1. Repeal Section 1-19A-14.
2. Expressly amend to clarify that the \$100 or less contributions a candidate may collect are in addition to any other public funds made available to the candidate. Perhaps insert a provision to this effect as a final sentence to Section 8 C of the bill:
"These contributions may be expended by the candidate and are in addition to any other public funds made available to the candidate or any limits imposed on the total amount of funds a publicly financed candidate may expend."
3. Strike the provision that limits a certified candidate to only receiving contributions "from qualified electors registered to vote in the candidate's district." See Section 8 of SB 12.